

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 09-65
Fees for Fiscal Year 2009)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 08-65
Fees for Fiscal Year 2008)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”) hereby submits the following comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”), released May 14, 2009, FCC 09-38, in which it seeks comment on the fees it assesses “to recover the regulatory costs associated with the Commission’s enforcement, policy and rulemaking, user information, and international activities.” ¶ 1. In particular, it requests comment on assessing fees on non-common carrier terrestrial International Bearer Circuits (“IBCs”) beginning in FY 2010, which it believes would be consistent with its current policy and the methodology it adopted in its Submarine Cable Order.¹ As discussed below, Sprint opposes the application of regulatory fees to terrestrial non-common carrier IBCs used exclusively for the provision of Internet/IP services.

¹ Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket No. 08-65, Second Report and Order (rel. March 24, 2009 (“Submarine Cable Order”), ¶ 14.

According to the Commission's background on the application of regulatory fees to IBCs, only common carriers are required to pay fees based on terrestrial facilities. Although non-common carriers have been required to pay fees based on their submarine cable and satellite facilities, they have not be required heretofore to contribute based on terrestrial facilities. Sprint believes that the exclusion of non-common carrier facilities that are used for IP-based "information services" is appropriate and consistent with the Commission's determination to treat wireline broadband Internet access services, including the transmission component, as "information services" and exclude such services from regulatory fees.²

The Commission has a long history in making determinations of what is "telecommunications," or "basic," service and what is "information," or "enhanced," service.³ Providers of basic services are common carriers, and those that provide information services are non-common carriers. The classic and most oft-quoted definition of "enhanced" is that taken from the Commission's *Computer II* decision:

An enhanced service combines basic service with "computer processing applications [that] act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, or provide the subscriber additional, different or restructured information, or involve subscriber information with stored information."⁴

² Sprint filed a Petition for Declaratory Ruling on February 6, 2009 that regulatory fees should not be applied to IBCs used exclusively for the provision of Internet/IP traffic. This petition has not yet been placed on Public Notice.

³ This history is briefly summarized in the notice of proposed rulemaking in IP-Enabled Services, 19 FCCR 4863, 4879-85 (2004), and more recently in Appropriate Framework For Broadband Access to the Internet over Wireline Facilities, 20 FCCR 14853, 14866-71 (2005) ("Wireline Broadband Order").

⁴ California v. FCC, 905 F.2d 1217, 1223 n.3 (9th Cir. 1990), *quoting* Amendment of Section 64.702 of the Commissions Rules and Regulations (Second Computer Inquiry), 77 FCC2d 384, 387 (1980), *citing also* 47 CFR § 64.702(a).

This definition formed the basis of the definition of “information services” enacted in the 1996 Telecommunications Act.⁵ The Commission has determined that the Act’s definition encompasses all the services included in the Commission’s definition of “enhanced services,” including, “among other things, such services as voicemail, electronic mail, facsimile store-and-forward, interactive voice response, protocol processing, gateway, and audiotext information services.”⁶

There is no question that the Internet/IP traffic transmitted over the IBCs constitutes information services. The applications carried over these circuits range from relatively simple email messaging to uploads and downloads of vast amounts of data, including web content and other computer-to-computer transmissions that involve “generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information.” While voice applications may be included in the mix of IP-enabled services, the amount of capacity used for such applications is *de minimis*.⁷

ICBs used to provide non-common carrier services may constitute “telecommunications,” but are not “telecommunications services.” “Telecommunications

⁵ Compare 47 U.S.C. § 153(20) (“... the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing”)

⁶ See IP-Enabled Services, 19 FCCR at 4881 n.94; see also Wireline Broadband Order, 20 FCCR at 14871.

⁷ Most of Sprint’s international long distance traffic is handled through bilateral arrangements with foreign carriers involving non-IP interconnection. That traffic is passed through common carrier IBCs, for which Sprint pays regulatory fees.

service” is defined in the Communications Act as “the offering of telecommunications for a fee directly to the public,”⁸ and the definition of “telecommunications” is:

“... the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent or received.”⁹

While non-common carrier IP-enabled IBCs may constitute “telecommunications,” they are not offered for a “fee directly to the public” and are not offered as a stand-alone basis. Rather, they are used as transmission components for the offering of global information services, including IP-VPN and Internet services.

The fact that information services travel over IBCs does not render these IBCs a telecommunications service separate and apart from the information services they carry.¹⁰ IBCs provide an underlying transmission component for information services and thus may constitute “telecommunications,” but not necessarily “telecommunications service.”¹¹ For purposes of regulatory classification, these IBCs do not differ from wireline broadband Internet access transmission components. For carriers that have elected not to provide these circuits for a fee directly to the public, they should not be regulated under Title II of the Communications Act and regulatory fees should not apply

The Commission has rarely applied regulatory fees to information services. In 2007, the Commission made the decision to impose regulatory fees on providers of

⁸ 47 U.S.C. § 153 (46).

⁹ 47 U.S.C. § 153 (43).

¹⁰ See Inquiry Concerning High Speed Access to the Internet Over Cable and Other Facilities, 17 FCCR 4798, 4823 (2002), *rev’d and remanded*, Brand X Internet Services v. FCC, 345 F.3d 1120 (9th Cir. 2003), *aff’d*, NCTA v. Brand X Internet Services, 545 U.S. 967 (2005).

¹¹ See Wireline Broadband Order, 20 FCCR at 14899, 14909-12.

interconnected VoIP services.¹² The Commission noted that it had previously applied its Title I authority to make interconnected VoIP providers subject to universal service fund (“USF”) contribution obligations and to requirements to supply 911 emergency calling capabilities, as well as to impose customer proprietary network information (“CPNI”) obligations, disability access obligations, and telecommunications relay services (“TRS”) requirements.¹³ Relying in particular on its judicially approved decision to impose USF obligations on interconnected VoIP services,¹⁴ the Commission found it was appropriate to subject interconnected VoIP service providers to the Commission’s authority under Section 9 of the Communications Act and thus to impose regulatory fees.¹⁵

The case of the IBCs at issue here is very different from that of interconnected VoIP service. These IBCs are a component of various information services, not a complete offering like interconnected VoIP. In no sense have the IBCs at issue been “used to replace traditional telephone service,”¹⁶ nor can the information services carried by these circuits be considered a substitute for ordinary telephone service in any sense. Thus, the Commission’s decision to impose regulatory fees on interconnected VoIP services is simply inapposite to Internet/IP IBCs.

¹² Assessment and Collection of Regulatory Fees for Fiscal Year 2007, MD Dkt. No. 07-81, FCC 07-140 at ¶¶ 11-13 (rel. Aug. 6, 2007) (“2007 Regulatory Fees Order”).

¹³ *Id.* at ¶ 12.

¹⁴ *Id.* at ¶ 12 and n. 17, *citing* Universal Service Contribution Methodology, 21 FCCR 7518, 7536-43 (2006), *aff’d in relevant part*, Vonage Holdings Corp. v. FCC, 489 F.3d 1232 (D.C. Cir. 2007).

¹⁵ 2007 Regulatory Fees Order, FCC 07-140 at ¶ 13.

¹⁶ *Id.* at ¶ 12.

The Commission previously has rejected claims by providers of certain other services that they should not be subject to fees because they involve information services.¹⁷ Typically these claims were rejected either because they involved allegedly “enhanced” features that were in actuality “adjunct to basic,” *i.e.*, features that facilitate the provision of ordinary telecommunications service,¹⁸ or because any properly classified information service features were not “functionally integrated” with the core telecommunications offering that was properly subject to fees.¹⁹

Rather than being “adjunct to basic,” the telecommunications transmission component provided by the IBCs at issue is “adjunct” to the information services carried over them. Internet/IP IBCs not only facilitate, but are necessary for, the provision of global Internet and IP-based information services. These circuits are unquestionably integrated with the information services that they carry. Those services could not be delivered outside of the United States without the use of the IBCs at issue here. These IBCs are themselves provisioned solely for the purpose of providing international transport for Internet and IP-based services. The Commission’s precedents for rejecting claims of “information services status” as a shield against the imposition of fees are thus not applicable to the situation of Internet/IP international bearer circuits.

The case most similar to that of the IBCs at issue here is that of wireline broadband transmission facilities. As note above, these circuits do not differ from

¹⁷ See, e.g., Request for Review by InterCall, Inc. of Decision by Universal Service Administrator, CC Docket. 96-45, FCC 08-160 (rel. June 30, 2008) (“InterCall Order”).

¹⁸ *Id.* at ¶ 11 & n. 32, citing North American Telecommunications Association, 101 FCC2d 349, 363 (1985).

¹⁹ InterCall Order, FCC 08-160 at ¶¶ 12-13 & n. 33, citing Regulation of Prepaid Calling Card Services, 21 FCCR 7290, 7296-96 (2006).

wireline broadband facilities for purposes of regulatory classification. The Commission has determined that, after a transition period that has since elapsed, facilities-based information service providers that cease to offer the transmission component underlying the information service as a common carrier service will not be required to make USF contributions based on the revenue derived from providing that transmission service.²⁰ As the revenue-based calculations for regulatory fees for interstate telecommunications service providers are based on the same revenue data collected to determine USF contributions,²¹ no regulatory fees are paid for wireline broadband transmission facilities as well. As the only material distinction between Internet/IP IBCs and wireline broadband facilities is that the latter provides transmission to and from a customer's premises while the former provides transmission between countries, there is no discernible reason why Internet/IP IBCs should be subject to regulatory fees while wireline broadband facilities are not.

Sprint does not dispute that the Commission has jurisdiction under Section 2(a) of the Communications Act over Internet/IP international bearer circuits as they are manifestly "foreign communication by wire,"²² and thus the Commission has authority under Section 9 to impose regulatory fees.²³ But for the same reasons that have led the Commission to exempt wireline broadband transmission facilities from revenue-based

²⁰ Universal Service Contribution Methodology, 21 FCCR at 7549 n. 206.

²¹ Regulatory Fees Fact Sheet: What You Owe – Interstate Telecommunications Service Providers (ITSP) for FY 2008 (August 2008).

²² 47 U.S.C. § 152(a).

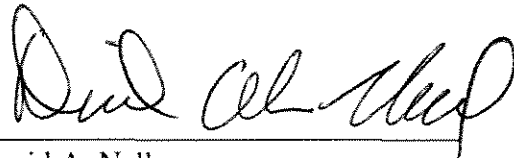
²³ The decision to adopt "per-system" fees for submarine cable operators, *see Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, FCC 09-21 (rel. Mar. 24, 2009), does not address the question whether fees should be imposed on a per-circuit basis on IBCs used exclusively for Internet/IP services.

regulatory fees, international bearer circuits that carry Internet and IP traffic should likewise be exempt from per-circuit regulatory fees.

For the reasons expressed herein, Sprint respectfully requests that the Commission not impose regulatory fees on international bearer circuits used exclusively for transmission of Internet and Internet protocol services.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

A handwritten signature in black ink, appearing to read "David A. Nall", written over a horizontal line.

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